

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-34

In the Matter of

Amendment of Section 73.202(b) RM-8600
Table of Allotments,
FM Broadcast Stations.
(Rapid City, South Dakota)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 22, 1995; Released: March 29, 1995

Comment Date: May 22, 1995

Reply Comment Date: June 6, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Conway Broadcasting ("petitioner"), proposing the allotment of Channel 222C at Rapid City, South Dakota, as the community's seventh local FM transmission service.¹ Petitioner states its intention to apply for the channel, if allotted.

2. We believe the petitioner's proposal warrants consideration because the proposed allotment could provide Rapid City with its seventh local FM transmission service. An engineering analysis has determined that Channel 222C can be allotted to Rapid City in compliance with the Commission's minimum distance separation requirements at city reference coordinates.²

3. Accordingly, we will seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Rapid City,		
South Dakota	230C1, 250C1,	222C, 230C1,
	254C1, 262C1	250C1, 254C1,
	281C1	262C1, 281C1
		292C ³

¹ On November 4, 1994, petitioner filed a petition proposing the allotment of Channel 292C at Rapid City, South Dakota, as its sixth local FM transmission service. We note that Commission policy states that "[i]n markets with fewer than 15 stations where the 'less than 50 percent' standard would permit ownership of three stations, an entity may not own three same service stations; pursuant to the new local rules, no more than two of those three stations may be in the same service." Accordingly, petitioner is eligible to apply for two FM channels at Rapid

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before May 22, 1995, and reply comments on or before June 6, 1995, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Lars Conway
Conway Broadcasting
4415 Fremont Ave., South
Minneapolis, Minnesota 55409
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

City. *See Revision of Radio Rules and Policies (Memorandum Opinion and Order)*, 7 FCC Rcd 6387 (1992), n.44.

² The coordinates for Channel 222C at Rapid City are North Latitude 44-04-50 and West Longitude 103-13-50.

³ On November 30, 1994, a *Notice of Proposed Rule Making* was adopted proposing the allotment of Channel 292C at Rapid City, South Dakota. *See* MM Docket No. 94-140, 9 FCC Rcd 7290 (1994).

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
 Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.